THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 12034 of 1994

Dated 17-02-2006

Between:

P.Jaganmohan Rao.

..... PETITIONER

AND

M/s. I.D.L. Chemicals Ltd., Kukatpally, Hyderabad.

.....RESPONDENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 12034 of 1994

O R D E R:

Aggrieved by the award of the Additional Tribunal-cum- Additional Labour Court, Hyderabad in I.D.No.7 of 1993, dated
18-09-1993, published on 30-12-1993, the present writ petition is filed by the unsuccessful workman.

Brief facts, to the extent necessary, are that the petitioner herein was appointed as a worker under the first respondent on
12-09-1977. His services were terminated on 01-07-1981 and his last drawn wages are said to be Rs.720/- per month. Alleging violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), the petitioner approached the Tribunal. By award dated 18-09-1993, the Tribunal directed payment of compensation of Rs.6,000/- in lieu of reinstatement. Petitioner would contend before this Court that since the petitioner had worked for nearly four years on a monthly salary of Rs.720/-, the Tribunal erred in not directing reinstatement and in directing payment of paltry sum of Rs.6,000/-.

Sri P.Venkat Swamy, learned counsel for the petitioner, would submit that since the petitioner had put in four years of service, he could not have been terminated without due enquiry, that retrenching his services without complying with the mandatory provisions of Section 25-F of the Act would render his termination
ab initio void consequent upon which, the petitioner will be entitled to be reinstated with continuity of service and full back wages. Learned counsel would submit that directing payment of compensation, that too merely Rs.6,000/-, was not justified. Learned counsel would place reliance on the judgments of the Madras High Court in **N.Selvaraj v. Management of Seeranaickenpalayam Weavers' Co-op Production & Sales Society Ltd., Coimbatore**; **Management of Kodumudi Growers Co-operative Bank Ltd., Kodumudi v. Presiding Officer, Labour Court & Anr**.; the Karnataka High Court in **Karnataka Electricity Board v. Pyare Jan &**

Ors. and the Division Bench of the Rajasthan High Court in **Madan Singh Rawat v. Ajmer Central Co-Operative Bank** .

Sri P. Nageswara Sree, learned counsel for the first respondent, on the other hand, would place reliance on **Management of Coimbatore Pioneer B. Mills v. Presiding Officer, Labour Court, Coimbatore**; **Workmen of Coimbatore Pioneer "B" Mills Ltd v. Labour Court and others**; **Gujarat State Road Transport Corpn. V. Mulu Amra**; **Rolston John v. Central Government Industrial Tribunal-cum-Labour Court**; **Rattan Singh v. Union of India**; **Sain Steel Products v. Naipal Singh; General Manager, Haryana Roadways v. Rudhan Singh; Dungar Das v. UCO Bank** and **Blow Plast Ltd v. N.S.H.Mashraqui & oth.,** in support of his contention that the Tribunal was justified in directing payment of compensation in lieu of reinstatement.

Before examining the rival contentions, it is necessary to examine the reasons based on which the Tribunal directed payment of compensation in lieu of reinstatement.

The lis before the Tribunal was on the basis of a reference which contained the names of 38 workmen. Since two of them died during the pendency of the dispute, their legal representatives were brought on record. The Tribunal took note of the fact that 35 of the workmen had entered into a settlement with the management and had received amounts in full and final settlements of all their claims. Insofar as the two deceased workmen were concerned, taking into consideration their last drawn pay of Rs.700/- p.m. and they had worked for three years, the Tribunal was of the view that a lump sum amount of Rs.4,500/- was reasonable and adequate compensation. From among these 38 workmen, it was only the petitioner herein, (who was petitioner No.27 before the Tribunal), who contested the matter. Taking into account the fact that the petitioner had worked for less than four years, and that his last drawn pay was Rs.720/- p.m., and since he had left the services along with other workman on his own, the Labour Court considered a lump sum payment of Rs.6,000/- as reasonable and adequate compensation payable to him for all his claims.

On a query from the Court as to whether the first respondent was willing to enhance the compensation awarded by the Tribunal, Sri Nageswara Sree, learned counsel for the first respondent, on instructions, would submit that the first respondent was willing to pay a sum of Rs.1,00,000/- as compensation to the petitioner herein, in full

and final settlement of all his claims. However, Sri P. Venkat Swamy, learned counsel for the petitioner, on instructions, would submit that the petitioner was not agreeable for receiving the said amount and that an order be passed by this Court on merits.

The fact remains that among 38 workmen, who were aggrieved on account of termination of their services and who were the parties to the reference before the Industrial Tribunal, 35 had entered into a separate settlement with the first respondent, the legal representatives of two others, who died during the pendency of proceedings before the Tribunal and had put in three years of service, were paid Rs.4,500/- as compensation while the petitioner herein, who had put in four years of service as on
01-07-1981, was paid compensation of Rs.6,000/-. One fact which is required to be taken note of is that the services of the petitioner were discontinued on 01-07-1981 nearly 25 years ago. The question which arise for consideration is as to whether the petitioner is justified in contending that he should be reinstated into service at this stage and be paid entire back wages for 25 years.

Now the judgments referred to by the petitioner. In **N.Selvaraj** (1 supra) the Labour Court having held that retrenchment was not valid, however, directed the Management to pay compensation in lieu of reinstatement. A Single Judge of the Madras High Court held that since the Labour Court had found retrenchment not to be *bona fide* when it considered the relief, it was not entitled to dilate its own findings and award compensation in an unreasonable manner. The Madras High Court quashed the award and directed the first respondent-employer to reinstate the workman into service with consequential benefits.

In **Management of Kodumudi Growers Co-operative Bank Ltd., Kodumudi** (2 supra), a Single Judge of the Madras High Court held that the order of retrenchment and payment of compensation have to be made simultaneously and asking the workman to come and collect one month's wages, in lieu of notice, from the office of the employer would not satisfy the requirements of Section 25-F of the Act. In this case, the question as to whether the Labour Court was entitled to award compensation in lieu of reinstatement, for violation of Section 25-F of the Act did not arise for consideration.

It is necessary to note that both in **N.Selvaraj** (1 supra) and **Management of**

Kodumudi Growers Co-operative Bank Ltd., Kodumudi (2 supra), the earlier Division Bench of the Madras High Court in **Management of Coimbatore Pioneer B. Mills** (5 supra) as confirmed by the Supreme Court in **Workmen of Coimbatore Pioneer "B" Mills Ltd** (6 supra), was not noticed.

In **Karnataka Electricity Board** (3 supra) a Single Judge of the Karnataka High Court, after referring to the Division Bench judgment of the Madras High Court in **Workmen of Coimbatore Pioneer "B" Mills Ltd** (6 supra), and the fact that the said order was confirmed by the Supreme Court, held that even though there was justification for retrenchment of the workmen, since Section 25-F had not been fully complied with, and since the places of two workmen, (whose services were already retrenched), were already taken by those who were regularly recruited, held that in lieu of reinstatement, the appropriate relief which could be granted should be payment of lump sum compensation. The learned Judge directed the employer to pay a lump sum compensation of Rs.60,000/- to each of the two workmen as compensation in lieu of reinstatement and all other monetary claims by the workmen against the employer.

In **Madan Singh Rawat** (4 supra) a Division Bench of the Rajasthan High Court, after holding that failure to comply with the mandatory provisions of Section 25-F of the Act would render termination of the workman illegal and *non est*, directed the respondent-Bank to reinstate the workman into service with all back wages. The question as to whether the Labour Court could, in appropriate cases, direct payment of compensation in lieu of reinstatement for violation of Section 25-F of the Act did not arise for consideration in this case.

It is well settled that the conditions prescribed under Section 25-F of the Industrial Disputes Act are required to be complied with prior to retrenchment and failure to comply with these pre-conditions would render termination of the services of a workman *ab initio* void. The question which, however, arises for consideration is as to whether in every case, of failure to comply with Section 25-F of the Industrial Disputes Act, the Industrial Tribunal/Labour Court has necessarily to direct reinstatement with full back wages or whether it has the discretion to award compensation in lieu of reinstatement.

In **Management of Coimbatore Pioneer B. Mills** (5 supra), the Labour Court found the retrenchment bona fide and the reasons given therefor legal and valid. It

also found that there was non-compliance of the provisions of clause (b) of Section 25-F inasmuch as retrenchment compensation and notice pay was not paid before or simultaneously with the notice of retrenchment. The Labour Court held that the retrenchment was not valid. While refusing reinstatement, the Labour Court awarded each of the workmen one month's wages as compensation in lieu of reinstatement. The Division Bench of the Madras High Court, while refusing to grant reinstatement, however, modified the award of the Labour Court substituting two months pay, for the one month pay granted by the Labour Court, as compensation in lieu of reinstatement. In this context the Division Bench held thus:

"…….In a case where to the satisfaction of the Court it is established that there was need and necessity for retrenchment in the industry and the management for legal and valid reasons decided to retrench, the Labour Court in our view would have to consider whether it will be just and reasonable to order reinstatement while it gave a finding that S.25F had not been complied with. We are aware that the Supreme Court in clear and unmistakable terms has held in the decision in State of Bombay v. Hospital Mazdoor Sabha (1960-I LLJ 251), that the non-compliance with the conditions of S.25F(b) relating to payment of compensation would render the impugned retrenchment invalid and inoperative. The decision relied on by the leaned counsel for the workers in Sridharan Motor Service v. Industrial Tribunal, Madras and others, (1959-I LLJ 380), and Indian General Navigation and Railway Company Ltd. And another v. Their Workmen, (1960-I, LLJ 13), do not in any way advance further than holding that an illegal action can never be justified. In fact, the decision of the Supreme Court in State of Bombay v. Hospital Mazdoor Sabha (supra) was interpreted and understood in Udaipur Mineral Development Syndicate Pvt. Ltd v. M.P.Dave and another (1975-II, LLJ 499), as holding that in such case there is no termination of the relationship of employer and employee. But in none of these decisions cited it has been held that even if the Labour Court were to find that there was need for retrenchment and the retrenchment was bona fide, there was no option for the Labour Court but to order reinstatement in all cases of non-compliance of the provisions of S.25-F of the Act ……

…….We are, therefore, of the view that in such circumstances of non-compliance with the provisions of S.25F(b) where bona fides or the need for retrenchment is justified, the Labour Court will have a discretion with reference to the facts in each case, either to order reinstatement or direct payment of compensation in lieu of such reinstatement. The order of the Labour Court in such circumstances will be open to question if it is arbitrary or not based on valid or relevant criteria……."

This judgment of the Division Bench of the Madras High Court was affirmed

in **Workmen of Coimbatore Pioneer "B" Mills Ltd**
(6 supra), wherein the Supreme Court, on refusing to direct reinstatement, increased the compensation, payable to the workmen in lieu of reinstatement, from two months' wages, as directed by the Division Bench of the Madras High Court, to four months' wages.

In **Gujarat State Road Transport Corpn.** (7 supra), the Supreme Court directed payment of lump-sum compensation of Rs.75,000/- in lieu of reinstatement, since the workman had been dismissed more than 14 years prior to the date of its order,

In **Rolston John** (8 supra), the Supreme Court held that retrenchment of the workman was in contravention of Section 25-F of the Industrial Disputes Act and void and ineffective. However, keeping in view the facts and circumstances of the case, the Supreme Court did not consider it appropriate to grant the relief of reinstatement and directed that, in full and final settlement of all claims of the workman and in lieu of reinstatement and consequential benefits, the employer shall pay compensation of Rs.50,000/- to the workman and on such payment the matter would stand concluded between the parties.

In **Rattan Singh** (9 supra), the Supreme Court held that protection of Section 25-F of the Industrial Disputes Act could not be denied to the daily rated worker. While setting aside the order of termination of services of the workman, on the ground of violation of Section 25-F of the Industrial Disputes Act, the Supreme Court was not inclined to direct reinstatement since nearly 20 years had elapsed from the date on which the services of workman were terminated and directed that a consolidated sum of Rs.25000/- be paid to the workman as compensation, in lieu of back wages and reinstatement, and in full and final settlement of all claims of the workman.

In **Sain Steel Products** (10 supra), the Labour Court, on finding that termination of the services of the workmen was without complying with Section 25-F of the Industrial Disputes Act and was therefore illegal, directed reinstatement of the workmen with back wages at the minimum rate of wages till the date of his reinstatement. The Supreme Court, while confirming the award of the Labour Court, considered the fact that the workman had not been in employment for more than 25 years, it would not be proper to put him back into service and instead some reasonable compensation could be paid to the workman in lieu of back wages and

reinstatement. A sum of Rs.50,000/- was directed to be paid as compensation in lieu of reinstatement.

In **General Manager, Haryana Roadways** (11 supra), the Tribunal held that termination of services of the workman, without complying with the requirement of Section 25-F of the Industrial Disputes Act, was illegal. The workman was directed to be reinstated with 50%back wages. The award of the Tribunal was confirmed by the Punjab and Haryana High Court. The Supreme Court also held that the provisions of Section 25-F of the Industrial Disputes Act were clearly applicable and that termination of the services of the workman was invalid. While examining the question as to whether award of 50% back wages to the workman was justified, the Supreme Court held thus:

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e., whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely whether ad hoc, short terms, daily wages, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balance in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e., from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year"

I n **Mount Mettur Pharmaceuticals Ltd v. Second Additional Labour Court, Madras**, the Labour Court held that retrenchment effected by the management was bona fide and since Section 25-F of the Industrial Disputes Act had been violated, those workmen who had completed 240 days, within 12 calendar months preceding the order of retrenchment, were directed to be reinstated with full back wages. The award of the Labour Court was confirmed by a single judge of the Madras High Court and when the matter came up for consideration, before the Division Bench, it

was held thus:

"In cases where the Labour Court specifically finds that the retrenchment effected by the management is justified and not mala fide, the Labour Court should exercise discretion and pass, instead of directing reinstatement with full back wages, an award directing a just amount of compensation inn lieu of reinstatement. As already stated, it is not the law that in every case of infringement of S.25F, the award of reinstatement with back wages is a must by the Labour Court. In cases where the management is found to be justified in effecting retrenchment and its decision to effect retrenchment is not mala fide, the Labour Court will be exercising its discretion properly if suitable compensation in lieu of reinstatement with back wages is ordered. In this case, the Labour Court has proceeded on the basis that since there is infringement of s.25F, it should straightway grant the relief of reinstatement with back wages, ignoring the fact that discretion if left with the Labour Court either to direct reinstatement with back wages or to award compensation instead. Since the Labour Court has not directed its mind to this aspect as to the relief to be granted to the concerned four workmen, we set aside the order of the learned Judge and also the award passed by the Labour Court and direct suitable compensation in lieu of reinstatement for these four workmen"

In **Dungar Das** (12 supra), the Gujarat High Court held that an employee, who was out of job for a number of years, loses his proficiency, productivity and efficiency and in case the respondents are directed to reinstate such a person into service after such a long time, it would lead to complications. It was held that the question whether an employee should be reinstated or not depends upon various factors such as (1) the nature of employment; (2) the period between the date of appointment and the date of termination i.e., length of service; (3) the period between the date of termination and the date of award; and (4) the period between the date of termination and the conclusion of proceedings. The Gujarat High Court further held that, in case a person is appointed for a short period of time without making him go through a process of selection and the gap between the date of termination and the award of the Tribunal is not a large one, ordinarily the employee should be awarded compensation in lieu of reinstatement when it is found that his termination was in violation of the provisions of Section 25-F of the Industrial Disputes Act. The Gujarat High Court held that the Labour Court had the discretion to award compensation in lieu of reinstatement, and when it had exercised its discretion awarding compensation, it could not be said that the Labour Court had committed any error, much less error on facts or law or a jurisdictional error, which called for interference of the High Court, in its supervisory jurisdiction, under Articles

226 and 227 of the Constitution of India.

I n **Blow Plast Ltd** (13 supra), the Bombay High Court held that notwithstanding violation of Section 25-F of the Act, the Industrial Tribunal may refuse reinstatement and may award compensation for breach of Section 25-F on the ground that the action of the Company though illegal was justified.

While retrenchment, in violation of Section 25-F, would not automatically result in reinstatement of the workman with full back wages, Industrial Tribunals/Labour Courts, for just and valid reasons, have the discretion to award compensation in lieu of reinstatement.

In the present case, on a reference in relation to termination of the services of 38 workmen, 35 of whom had already entered into settlement with the Management during the pendency of the proceedings before the Tribunal and the legal representatives of two other workmen, who had died during the pendency of the dispute, were directed to be paid compensation of Rs.4,500/- since they had put in service of three years prior to their being terminated, petitioner alone, from among the 38 workmen, had contested the matter and had sought that he be reinstated with continuity of service and full back wages. Further, termination of services of the petitioner herein was in 1981 nearly 25 years ago. At this length of time, more than a quarter century having lapsed in the interregnum, I see no reason to interfere with the award of the Tribunal and direct reinstatement of the workman with back wages.

Insofar as the quantum of compensation, in lieu of reinstatement, is concerned, it is not for this Court, in proceedings under Article 226 of the Constitution of India, to go into the adequacy or sufficiency of the compensation unless this Court finds that the compensation awarded by the Labour Court is illusory. As stated above, on instructions, Sri P.Nageswara Sree, learned counsel for the first respondent, submitted that the first respondent is willing to pay a sum of Rs.1,00,000/-, as compensation, in full and final settlement of all the claims of the petitioner herein. Recording this submission of Sri P.Nageswara Sree and since Sri P.Venkat Swamy, learned counsel for the petitioner, on instructions, submits that the petitioner is not inclined to accept the said amount and seeks adjudication on merits, I see no reason to interfere with the award of the Tribunal.

The writ petition fails and is accordingly dismissed. However in the circumstances without costs.

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17-02-2006

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